

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, and Notices
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 28

MARCH 9, 1994

NO. 10

This issue contains:

U.S. Customs Service

T.D. 94-15 Through 94-17

T.D. 94-1 (Corrections)

General Notices

U.S. Court of International Trade

Slip Op. 94-26 Through 94-29

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 94-15)

EXTENSION OF ATLANTIC PETROLEUM SERVICES, INC.'S, CUSTOMS GAUGER APPROVAL AND LABORATORY ACCREDI- TATION TO THE NEW LABORATORY LOCATED IN STATEN ISLAND, NEW YORK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Atlantic Petroleum Services Inc.'s Customs gauger approval and laboratory accreditations to include their new laboratory facility, which is located at 500 Western Ave. (GATX Terminal), Staten Island, New York.

SUMMARY: Atlantic Petroleum Services, Inc., of Staten Island, New York, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Staten Island (GATX Terminal), New York laboratory. Specifically, the extension given to the Staten Island site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristics, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Atlantic Petroleum Services, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditation to its Staten Island, New York laboratory facility. Review of the qualifications of the Staten Island laboratory facility shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites:

Atlantic Petroleum Services, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: 210 Granite Ave., Mariner's Harbor, New York and 500 Western Ave. (GATX Terminal), Staten Island, New York.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 (202-927-1060).

Dated: February 17, 1994.

GEORGE D. HEAVEY,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, February 28, 1994 (59 FR 9520)]

(T.D. 94-16)

EXTENSION OF CAMIN CARGO CONTROL, INC.'S, CUSTOMS
GAUGER APPROVAL AND LABORATORY ACCREDITATION TO
THE SITE LOCATED IN INGLESIDE, TEXAS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Camin Cargo Control, Inc.'s Customs gauger approval and laboratory accreditation to include their Ingleside, Texas facility.

SUMMARY: Camin Cargo Control, Inc., of Linden, New Jersey, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Ingleside, Texas site. Specifically, the extension given to the Ingleside site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristic, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for

certain products from Customs accredited commercial laboratories and approved gaugers. Camin Cargo Control, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditations to its Ingleside, Texas facility. Review of the qualifications of the Ingleside site shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites:

Camin Cargo Control, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: Linden, New Jersey; Thorofare, New Jersey; Everett, Massachusetts; Deer Park, Texas; and Ingleside, Texas.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927-1060.

Dated: February 18, 1994.

GEORGE D. HEAVEY,

Director,

Office of Laboratories and Scientific Services.

[Published in the Federal Register, February 28, 1994 (59 FR 9519)]

(T.D. 94-17)

**EXTENSION OF INCHCAPE TESTING SERVICES-CALEB BRETT,
INC.'S CUSTOMS GAUGER APPROVAL TO THE NEW SITE
LOCATED IN DEER PARK, TEXAS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Inchcape Testing Services-Caleb Brett, Inc.'s Customs gauger approval to include their new gauging facility, which is located at 2318 Center Street, Suite 308, Deer Park, Texas.

SUMMARY: Inchcape Testing Services-Caleb Brett, Inc., a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include its new facility in Deer Park, Texas. Specifically, the extension given to the Deer Park site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of gauging reports for certain products from Customs approved gaugers. Inchcape Testing Services-Caleb Brett, Inc., a Customs-approved commercial gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Deer Park, Texas facility. Review of the qualifications of Inchcape Testing Services-Caleb Brett, Inc., Deer Park site shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 (202) 927-1060.

Dated: February 18, 1994.

GEORGE D. HEAVEY,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, February 28, 1994 (59 FR 9519)]

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

(T.D. 94-1)

NORTH AMERICAN FREE TRADE AGREEMENT;
CORRECTIONS

RIN 1515-AB33

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the Federal Register which set forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act.

DATES: These corrections are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Office of Regulations and Rulings (202-482-7000).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 30, 1993, Customs published in the Federal Register (58 FR 69460) T.D. 94-1 to set forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) which was adopted by the United States through the enactment of the North American Free Trade Agreement Implementation Act ("the Act"), Public Law 103-182, 107 Stat. 2057. Those interim regulatory amendments took effect on January 1, 1994, to coincide with the effective date of the NAFTA.

This document corrects some errors published in T.D. 94-1. Two errors involved amended § 24.22: (1) paragraph (g)(1), as revised in the document, failed to fully reflect the change in wording of section 13031(a)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(5)) effected by section 521 of the Act for fiscal years 1994 through 1997; and (2) the document failed to amend paragraph (g)(2)(iv) to avoid a conflict between that paragraph and the amended statutory and paragraph (g)(1) language. In new § 181.45, a printing error involving the text of paragraph (a) before the example is corrected by rearranging the text without any change in substance. In addition, in order to ensure coverage of all appropriate litigation contexts involving Customs and its officers or agents, at the end of new §§ 181.98(b) and 181.116(f) the word "defendant" is corrected to read "party to the action". Finally, this document corrects a number of drafting or typesetting errors of an editorial nature.

CORRECTIONS OF PUBLICATION

Accordingly, the document published in the Federal Register as T.D. 94-1 on December 30, 1993 (58 FR 69460) is corrected as set forth below.

CORRECTION TO THE BACKGROUND SECTION

1. On page 69461, in the second column under the heading *Part 24*, the first paragraph is corrected to read:

Section 24.22, which was published as a final rule in T.D. 93-85 on October 21, 1993 (58 FR 54271), is amended to reflect changes to the commercial passenger arrival fee provisions of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) effected by section 521 of the Act. The changes involve, for fiscal years 1994 through 1997 (in effect, from January 1, 1994 through September 30, 1997), (1) replacement of the words "from a place outside the United States" by the words "from outside the customs territory of the United States", (2) an increase in the fee from \$5 to \$6.50, and (3) suspension of the fee exemption for persons whose journey involves certain specified locations outside the United States.

CORRECTIONS TO THE INTERIM REGULATIONS

2. On page 69470, in the third column, the amendatory language and text pertaining to § 24.22 are corrected to read:

2. Section 24.22 is amended by revising paragraph (g)(1), the introductory text of paragraph (g)(2)(i)(A), and paragraph (g)(2)(iv) to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section:

(i) For the period from January 1, 1994 through September 30, 1997, a fee of \$6.50 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States; and

(ii) Commencing on October 1, 1997, a fee of \$5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * *

(iv) Except during the period from January 1, 1994 through September 30, 1997, persons departing from and returning to the United States without having touched a foreign port or place;

* * * * *

3. On page 69475, in the first column, in § 181.12(a)(3), the second sentence should be a flush paragraph.

4. On page 69478, in the second column, in § 181.45, the text of paragraph (a) before the example is corrected to read:

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

5. On page 69479, in the second column, in § 181.47(a), the second sentence is corrected by removing the word "existing".

6. On page 69482, in the second column, in § 181.53(e)(2), the second sentence of the example is corrected by adding the word "have" after the word "would" within the parentheses.

7. On page 69491, in the third column, in § 181.94, the reference "thirty (30)" in the second sentence is corrected to read "30".

8. On page 69492, in the second column, in § 181.98(b), the word "defendant" at the end of the last sentence is corrected to read "party to the action".

9. On page 69493, in the third column, in § 181.100(a)(2)(iii), the text is corrected by adding the word "value" after the word "regional".

10. On page 69496, in the third column, in § 181.116(f), the word "defendant" at the end of the last sentence is corrected to read "party to the action".

Dated: February 17, 1994.

KAREN J. HIATT,
*Acting Assistant Commissioner,
Office of Commercial Operations.*

[Published in the Federal Register, February 24, 1994 (59 FR 8852)]

U.S. Customs Service

General Notices

PUBLIC MEETING ON CUSTOMS "MOD ACT"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a two-day public meeting will be held in the Department of Commerce Auditorium in Washington, D.C., commencing at 10:00 a.m. on Wednesday, March 8, 1994. The purpose of this meeting is to (1) provide the public with a general briefing on the entire "Mod Act," (2) give senior Customs managers an opportunity to share "strawmen" implementation proposals, and (3) give participants an opportunity to ask questions, make suggestions, and provide the Customs Service with informal input relative to implementation of Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057, codified at 19 U.S.C. 3301 note). To facilitate building access and control attendance, those planning to attend are requested to notify Customs in advance.

DATES: March 8, 1994, from 10:00 a.m. to 5:00 p.m., and March 9, 1994, from 9:00 a.m. to 4:00 p.m.

ADDRESS: Commerce Department Auditorium, Main Entrance to Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dale Snell, "Mod Act" Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Phone: (202) 482-6990; Fax: (202) 482-6994.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, the President signed the "North American Free Trade Agreement Implementation Act." The Customs modernization portion of this Act (Title VI of Public Law 103-182), popularly known as the Customs Modernization Act or "Mod Act," became effective when it was signed. To provide the public with a general "Mod Act" briefing, share "strawmen" implementation proposals, and invite infor-

mal dialogue relative to implementation plans and issues, Customs will hold an open meeting in Washington on March 8-9, 1994. Between 10 a.m. and 12:30 p.m. on March 8, a general briefing covering operational, automation and enforcement issues will be conducted. This general briefing will be similar to those conducted in Washington on February 9 and 10, 1994. Following the general briefing, senior Customs managers will conduct a series of presentations focussing on their proposals for implementing specific Mod Act provisions. Among the topics to be discussed in these focussed sessions will be regulatory audit, drawback, penalties, carriers, importer activity summary statements and reconciliation. Participants will be given ample opportunity to ask questions and provide suggestions during each session. Persons planning to attend are requested to pre-register by FAX with Mr. Dale Snell at 202-482-6994. Individuals not having access to facsimile equipment may pre-register by calling Mr. Snell at 202-482-6990. To meet Commerce Department building access requirements, attendees are encouraged to arrive approximately 30 minutes in advance of the meeting. Each individual attending Customs Mod Act Implementation meeting on March 8 and 9, 1994, will be required to sign a Commerce Department register and present photo-identification.

Dated: February 15, 1994.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(Published in the Federal Register, February 24, 1994 (59 FR 9016))

DATES AND DRAFT AGENDA OF THE THIRTEENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE CUSTOMS COOPERATION COUNCIL

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirteenth session of the Harmonized System Committee of the Customs Cooperation Council.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the Customs Cooperation Council.

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, International Nomenclature Staff, U.S. Customs Service (202-482-7000) or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the United States' tariff, the Harmonized Tariff Schedule of the United States ("HTSUS"). The Harmonized System Convention is under the jurisdiction of the Customs Cooperation Council ("CCC").

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System, or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be its thirteenth, and it will be held from April 11 to April 22, 1994.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of the Treasury, represented by the U.S. Customs Service, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the CCC. The Customs Service representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

Dated: February 23, 1994.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

[Attachment: Attachment A]

ATTACHMENT A
38.536 EDRAFT AGENDA FOR THE THIRTEENTH SESSION OF THE
HARMONIZED SYSTEM COMMITTEE

Monday, April 11, 1994 (3 p.m.) to Friday, April 22, 1994

N.B. Items marked (*WP) will be examined first by the presessional Working Party
(Wednesday, April 6, (10 a.m.) to Monday, April 11, 1994).

I

ADOPTION OF THE AGENDA

Draft Agenda	Doc. 38.536
Draft Timetable	Doc. 38.537

II

REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention; status of Recommendations; list of administrations applying an HS-based tariff; list of HS-based tariffs available in the Secretariat	Doc. 38.538
2. Recommendation of July 6, 1993	Doc. 38.576
3. Approval of decisions taken by the Harmonized System Committee at its 12th Session	Docs. 38.516 38.577
4. 30th Session of the Policy Commission	Doc. 38.578
5. Technical assistance activities of the Nomenclature and Classification Directorate	Doc. 38.539
6. Progress report on the HS Commodity Data Base	Doc. 38.540
7. Co-operation with other international organizations	Doc. 38.541
8. Other	

III

GENERAL QUESTIONS

1. Acceptance of the 1992 version of the Harmonized System	Doc. 38.543
2. Creation of a database of CCCN/HS documentation	Doc. 38.544
3. Possible insertion in the Explanatory Notes of a list of deleted code numbers	Doc. 38.545
4. Other	

IV

REPORT OF THE SCIENTIFIC SUB-COMMITTEE

Seventh Session	Doc. 38.530
Conclusions of the 7th Session of the Scientific Sub-Committee	Doc. 38.547

V

REPORT OF THE REVIEW SUB-COMMITTEE

Ninth Session	Doc. 38.300
Amendments to the Explanatory Notes as agreed by the 9th Session of the Review Sub-Committee consequential upon the objections regarding the Article 16 Recommendation of 6 July 1993	Doc. 38.626

VI

REPORT OF THE PRESESSIONAL WORKING PARTY	Doc. 38.750
(*WP) 1. Draft Correlation Tables	Doc. 38.549
(*WP) 2. Amendment of the Explanatory Note to heading 04.05 arising from the amendment of the heading	Docs. 38.550 38.667
(*WP) 3. Amendments to the Compendium of Classification Opinions arising from the classification of "Alpenhain Gourmet Camemberry" in subheading 0406.90	Doc. 38.551
(*WP) 4. Amendments to the Explanatory Notes arising from the classification of two types of water chestnuts in headings 07.14 and 08.02	Doc. 38.552
(*WP) 5. Amendment to the Compendium of Classification Opinions arising from the classification of "Meclofenoxate"	Doc. 38.553
(*WP) 6. Amendment to the Compendium of Classification Opinions arising from the classification of petroleum jelly (in retail packing) in heading 33.04	Doc. 38.554
(*WP) 7. Amendments to the Compendium of Classification Opinions arising from the classification of certain gaskets and materials used for the manufacture of gaskets in Chapter 40	Doc. 38.556
(*WP) 8. Classification Opinions arising from the classification of "Verosol" metallized textile fabric in heading 59.07	Doc. 38.557
(*WP) 9. Amendment to the Compendium of Classification Opinions arising from the classification of a paper/foil product used for making bags for packaging foodstuffs in heading 76.07	Doc. 38.558
(*WP) 10. Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of electric central heating boilers in Subheading 8403.10	Doc. 38.559
(*WP) 11. Amendments to the Compendium of Classification Opinions arising from the classification of evaporative air coolers in subheading 8479.89	Doc. 38.560
(*WP) 12. New Subheading Explanatory Note to subheading 9503.70 concerning the classification of toy sets	Doc. 38.561

VII

FURTHER STUDIES

1. Draft amendments to the Explanatory Note to heading 04.06 concerning the classification of breaded and pre-cooked cheeses	Doc. 38.562
2. Classification of "burdock"	Doc. 38.563
3. Amendment to the Explanatory Notes and possible amendment of the legal texts to clarify the scope of headings 15.11 and 15.13	Doc. 38.564
4. Classification of "Frugelletten" fruit tablets	Doc. 38.565
5. Classification of "Bach Flower" preparations	Doc. 38.566
6. Study of the Explanatory Notes and legal texts concerning the classification of petroleum jelly in the Harmonized System	Doc. 38.567
7. Possible amendment of the Explanatory Note to heading 39.20	Doc. 38.568
8. Amendment of the Explanatory Note to heading 41.09 arising from the classification of so-called "imitation metallised leather"	Doc. 38.569

FURTHER STUDIES—continued

- | | |
|---|-------------|
| 9. Amendment of the Explanatory Notes arising from the classification of wooden handles for table knives, spoons and forks in heading 44.21 | Doc. 38.570 |
| 10. Definition of the term "printed" for the purposes of subheading 4821.10 | Doc. 38.571 |
| 11. Classification of snowboard boots and possible amendment of the Explanatory Notes to Chapter 64 concerning their classification | Doc. 38.572 |
| 12. Separate identification of certain types of "waste" in the Harmonized System | Doc. 38.573 |

VIII

NEW QUESTIONS

- | | |
|--|--|
| 1. Definition of the expression "blocks, slabs and bars" in heading 18.06 | Doc. 38.555 |
| 2. Classification of products containing a substantial quantity of chocolate (chocolate coated wafers) | Doc. 38.580 |
| 3. Classification of fruits in alcohol | Doc. 38.624 |
| 4. Classification of "micro-ready sandwiches with potato crisps" | Doc. 38.408
(HSC/12) |
| 5. New Explanatory Note arising from the decision to amend Note 3 to Chapter 48 | Doc. 38.261
(HSC/12) |
| 6. Classification of products consisting of paper covered with polyethylene and/or aluminum, to be used for the manufacture of packagings for beverages | Doc. 38.548 |
| 7. Classification of school workbooks | Doc. 37.958
(HSC/11) |
| 8. Classification of nylon yarn cut to length and used as reinforcement in the manufacture of truck tyres | Doc. 38.269
(HSC/12) |
| 9. Classification of "Gamma Grip" | Doc. 38.415
(HSC/12) |
| 10. Possible amendments to the Explanatory Notes to headings 39.26, 44.21, 73.25, 73.26, 74.19 and 76.16 to include a reference to bird feeders and drinkers, without mechanical devices | Doc. 38.059
(HSC/11) |
| 11. Classification of a hand-held battery-operated sewing machine | Doc. 38.579 |
| 12. Classification of "EXT-311" and "EXT-515" carpet cleaners | Docs. 37.787
(HSC/10)
37.961
(HSC/11) |
| 13. Classification of an uninterruptible power supply | Doc. 38.574 |
| 14. Amendment to the Explanatory Note to heading 85.06 | Docs. 37.973
38.077
(HSC/11) |
| 15. Proposal by the United States Administration for the amendment of the Explanatory Notes to headings 85.42 and 85.43 | Doc. 38.465
(HSC/12) |
| 16. Possible amendments to the Nomenclature concerning heading 90.12 | Doc. 38.268
(HSC/12) |

NEW QUESTIONS—continued

17. Possible amendment of the Explanatory Note to heading 91.07	Doc. 38.416 (HSC/12)
18. Classification of empty video or audio cassettes	Doc. 38.627
19. Classification of "Domestos" thick bleach	Doc. 38.628
20. Possible amendments to the Explanatory Note to subheading 8452.10	Doc. 38.632
21. Classification of "Dr. Dünner Evening Primrose Oil" put up in capsules	Doc. 38.625
22. Classification of "animal sound books" for children	Doc. 38.633
23. Definition of the terms "meal" and "groats" in heading 19.01	Doc. 38.634
24. Draft Corrigendum to amend the Harmonized System	Doc. 38.542

IX

OTHER BUSINESS

List of questions which might be examined at a future session	Doc. 38.575
---	-------------

X

DATES OF THE NEXT SESSIONS (provisional)

REVIEW SUB-COMMITTEE

10th Session

Monday, September 5, 1994

Friday, September 16, 1994

HARMONIZED SYSTEM COMMITTEE

Working Party

Wednesday, November 2, 1994

Friday, November 4, 1994

14th Session

Monday, November 7, 1994

Friday, November 18, 1994

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 23, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, has been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF THE PLASTIC
TOP AND BOTTOM PORTION OF AN UNASSEMBLED PICNIC
COOLER

ACTION: Notice of proposed partial modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to partially modify a ruling pertaining to the tariff classification of the plastic top and bottom components of an unassembled picnic cooler.

DATE: Comments must be received on or before April 8, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Suzanne Karateew, Textile Classification Branch, (202-482-7050).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to partially modify a ruling pertaining to the tariff classification of the plastic top and bottom components of an unassembled picnic cooler.

In Headquarters Ruling Letter 953584, issued July 20, 1993, by the Director of the Commercial Rulings Division, Headquarters, the plastic

top and bottom portions of a picnic cooler, and a plastic handle that was to be imported separately, were respectively classified under subheadings 4202.99.1000 and 3926.90.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). At issue in this proposed partial modification, is the classification of the top and bottom components under subheading 4202.99.1000, HTSUSA, which provides for, *inter alia*, other containers of plastics that are "*wholly or mainly covered with paper*." As the subject merchandise of HRL 953584 is not covered with paper, classification is not proper within this subheading. Classification of the plastic top and bottom components is proper under subheading 4202.99.9000, HTSUSA, which provides for "other" containers of plastics.

Customs intends to partially modify Headquarters Ruling Letter 953584 to reflect proper classification of the subject merchandise in subheading 4202.99.9000, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling partially modifying the Headquarters Ruling Letter is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 17, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 20, 1993.
CLA-2 CO:R:C:T 953584 HP
Category: Classification
Tariff No. 3926.90.2500; 4202.99.1000

MR. DONALD L. FISCHER
HORTON, WHITELEY & COOPER
1900 Embarcadero, Suite 201
Oakland, CA 94606

Re: Unassembled picnic cooler. GRI 2(a); unfinished; container.

DEAR MR. FISCHER:

This is in reply to your letter of March 8, 1993. That letter concerned the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of components of plastic beverage containers, produced in India. Please reference your client J&B International.

Facts:

The merchandise at issue consists of separately imported components of plastic beverage carriers. The finished product is described as a molded plastic "sports novelty cooler." It is an insulated spherical picnic food carrier which resembles a sports ball—e.g., a golf ball or a baseball—and measures approximately 12 1/2" in diameter. The completed carrier

was classified in HRL 950467 of December 24, 1991, under subheading 4202.99, HTSUSA, as a "similar" container.

The three parts of the carrier consist of the plastic bottom half, the plastic top half, and a semi-circular plastic handle which clips onto the sides of the bottom half of the carrier. A clip on the underside of the handle attaches it to the upper surface of the top sphere. When the top half is fitted to the bottom half, the handle secures the pieces together.

The three pieces will be imported on different vessels and itemized in different entries. Alternatively, the top and bottom half will be imported pre-assembled, with the plastic handle imported separately on a different vessel and entry.

Issue:

Whether the pieces are classifiable in the provision for the whole container under the HTSUSA?

Law and Analysis:

Subheading 4202.99, HTSUSA, provides for, *inter alia*, other containers of plastics. The General Rules of Interpretation (GRIs) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part, that such "classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *." Goods which cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs, taken in order. GRI 2(a) holds that within a heading, any reference to an article includes unfinished, incomplete, unassembled or disassembled articles, so long as those unfinished, incomplete, unassembled or disassembled articles have the essential character of the completed articles.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System (Harmonized System) constitute the official interpretation of the scope and content of the tariff at the international level. They represent the considered views of classification experts of the Harmonized System Committee. *Totes, Inc. v. United States*, No. 91-09-00714, slip op. 92-153, 14 Int'l Trade Rep. (BNA) 1916, 1992 Ct. Intl. Trade LEXIS 158 (Ct. Int'l Trade 1992). While not treated as dispositive, the EN are to be given considerable weight in Customs' interpretation of the HTSUSA. *Boast, Inc. v. United States*, No. 91-11-00793, slip op. 93-20, 1993 Ct. Intl. Trade LEXIS 19 (Ct. Int'l Trade 1993). It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the Explanatory Notes when interpreting the HTSUSA. The EN to GRI 2(a), at page 2, describes the rule relating to articles presented unassembled as providing that:

(V) * * * complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

* * * * *

(VII) For the purposes of this Rule, "articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved.

The EN to GRI 2(a) focus on the degree of assembly necessary to make the component parts whole. The EN emphasize that the simpler the assembly process, the more likely the goods should be deemed unassembled goods. In this instance, it is clear that the component parts are complete, that the upper and lower pieces (but not the handle) each have the essential character of the whole, and that the simple procedures necessary for completion are attaching the top portion of the article to the bottom portion of the article, and attaching the plastic handle to each component. Therefore, classification as an unassembled container under GRI 2(a), HTSUSA, is controlling.

The fact that the top and bottom portions of the container are being imported at different times and in different entries from the plastic handle does not impact upon classification under GRI 2(a). See HRL 951183 of June 18, 1992 (bottom and top components of luggage, as well as straps and hardware, imported separately and at different times). Without the loose handle, each piece continues to be recognizable as an unfinished container. There is no complex post importation assembly required. Accordingly, the bottom

and top portions of the container, imported either together or separately, are both classifiable as unfinished containers in heading 4202, HTSUSA.

Holding:

As a result of the foregoing, the instant merchandise is classified as follows:

The Top and Bottom Portions:

*** under subheading 4202.99.1000, HTSUSA, as other containers of plastics. Pursuant to § 502(a)(3) of the Trade Act of 1974 (19 U.S.C. § 2462(a)(3)) and General Note 3(c)(ii)(A), HTSUSA, India has been designated a beneficiary developing country for the purposes of the Generalized System of Preferences (GSP), provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. § 2461 *et seq.*). Provided all applicable requirements are met under the GSP program, this merchandise may be entered free of duty. Otherwise, the applicable rate of duty is 3.4 percent *ad valorem*.

The Plastic Handle:

*** under subheading 3926.90.2500, HTSUSA, as handles of plastics not elsewhere provided for. Pursuant to § 502(a)(3) of the Trade Act of 1974 (19 U.S.C. § 2462(a)(3)) and General Note 3(c)(ii)(A), HTSUSA, India has been designated a beneficiary developing country for the purposes of the Generalized System of Preferences (GSP), provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. § 2461 *et seq.*). Provided all applicable requirements are met under the GSP program, this merchandise may be entered free of duty. Otherwise, the applicable rate of duty is 6.5 percent *ad valorem*.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.
CLA-2 CO:R:C:T 955261 SK
Category: Classification
Tariff No. 4202.99.9000

MR. DONALD L. FISCHER
HORTON, WHITELEY & COOPER
1900 Embarcadero, Suite 201
Oakland, CA 94606

Re: Partial modification of HRL 953584 (7/20/93); classification of an unassembled picnic cooler; top and bottom portion of the picnic cooler classifiable under 4202.99.9000, HTSUSA; subheading 4202.99 provides for articles wholly or mainly covered with paper; subheading 4202.99.9000 provides for "other" containers of plastics.

DEAR MR. FISCHER:

On July 20, 1993, this office issued you Headquarters Ruling Letter (HRL) 953584 in which we classified an unassembled picnic cooler. Upon review, that ruling is deemed to be partially in error. Our analysis follows.

Facts:

The merchandise at issue consists of separately imported components of plastic beverage containers. The finished product is described as a molded plastic "sports novelty cooler." It is an insulated spherical picnic food carrier which resembles a sports ball—e.g., a golf ball or a baseball—and measures approximately 12½ inches in diameter.

The three parts of the carrier consist of the plastic bottom half, the plastic top half, and a semi-circular plastic handle which clips onto the sides of the bottom half of the carrier. A clip on the underside of the handle attaches it to the upper surface of the top sphere. When the top half is fitted to the bottom half, the handle secures the pieces together.

The three pieces were to be imported in different vessels and itemized in different entries. Alternatively, the top and bottom halves of the cooler were to be imported preassembled, with the plastic handle imported separately on a different vessel and entry.

This modification pertains only to the classification of the top and bottom plastic portions of the article; the law and analysis section of HRL 953584 remains unmodified as does the portion of the holding which classified the plastic handle. Our analysis follows.

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's.

Heading 4202, HTSUSA, provides for:

Trunks, suit-cases, vanity-cases, executive-cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, power-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.

In HRL 953584, this office held that the plastic top and bottom portions of the unassembled picnic cooler were classifiable under subheading 4202.99.1000, HTSUSA. Customs' intent HRL 953584 was to classify the plastic top and bottom portions of the unassembled picnic cooler as "other containers of plastics." However, subheading 4202.99.1000, HTSUSA, provides for other containers of plastics that are "*wholly or mainly covered with paper*." As the subject merchandise of HRL 953584 is not covered with paper, classification is not proper within this subheading. Classification of the subject merchandise is proper under subheading 4202.99.9000, HTSUSA, which provides for "other" containers of plastics.

Holding:

The law and analysis portion of HRL 953584, and the classification of the plastic handle of the unassembled picnic cooler, remain unmodified.

The portion of HRL 953584 which classified the plastic top and bottom portion of the unassembled picnic cooler is modified and classification is now within subheading 4202.99.9000, HTSUSA, which provides for, *inter alia*, other plastic containers dutiable at a rate of 20 percent *ad valorem*. There is no textile quota category applicable to the merchandise at this time.

The designated textile and apparel categories may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Pursuant to 19 CFR 177.9(d), HRL 953584 is partially modified.

JOHN DURANT,
Director
Commercial Rulings Division.

**PROPOSED REVOCATION OF CUSTOMS RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF A PRINTED
CIRCUIT BOARD ASSEMBLY**

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a printed circuit board assembly. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before April 8, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Metals and Machinery Classification Branch, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c) (1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a printed circuit board assembly. In HQ 953381, issued on July 16, 1993, this assembly, which is used in a chart drive recorder, was classified under subheading 8503.00.40, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts suitable for use solely or principally with the electric motors, under 18.65 Watts (W), of heading 8501, HTSUS. The ruling letter is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that the printed circuit board assembly is classifiable as an assembly for a clock movement under subheading 9114.90.30, HTSUS. Note 4 to chapter 91 states that "movements and other parts suitable for use both in clocks or watches and in other articles (for example, precision instruments) are to be classified in this chapter." Further, Harmonized Commodity Description and Coding System Explanatory Note (EN) 91.14, pg. 1552, states that "parts suitable for use both in clocks or watches and in other articles, for example, in toys, meters or measuring or precision instruments (springs,

trains, jewels, hands, etc.) fall in this heading * * *." Therefore, although the assembly in question will be used in a chart drive assembly, it is classifiable under heading 9114, HTSUS, if the assembly is also suitable for use in clocks.

The assembly is the timing mechanism for the chart drive recorder. It contains an integrated circuit that allows for the regulation of the time interval between pulses. This action causes the shaft and magnet to rotate 180 degrees every second, which, in turn, rotates the gears in the chart drive recorder. Accordingly, it is our opinion that the article in question is classifiable as an assembly for a clock movement under subheading 9114.90.30, HTSUS.

Customs intends to revoke HQ 953381 to reflect the proper classification of the product in subheading 9114.90.30, HTSUS, which provides for assemblies and subassemblies for clock movements consisting of two or more pieces or parts fastened or joined inseparably together. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling revoking HQ 953381 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 18, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 16, 1993.
CLA-2 CO:R:C:M 953381 LTO
Category: Classification
Tariff No. 8503.00.40

MR. TIM ACKERMAN
QUARTEX INC.
1012 Host Drive
Lake Geneva, Wisconsin 53147

Re: Printed Circuit Board assembly; mounted piezoelectric crystals; parts of motors; EN 85.41.

DEAR MR. ACKERMAN:

This is in response to your letter of January 13, 1993, requesting the classification of a printed circuit board assembly under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The article in question is a printed circuit board (PCB) assembly made of paper phenolic with copper paths and nickel/gold plated pads. Attached to the PCB is a wire bonded inte-

grated circuit covered by epoxy and a 32.768 KHZ quartz crystal. By soldering the proper connections, the circuit board assembly is tuned to deliver a pulse every second at the motor paths. Typical input voltage at the positive and negative pads is 1.0 to 1.5 volts DC (direct current). The circuit board assembly is intended to drive a permanent magnet motor in a chart drive application. The sample you provided was sent to the office of Laboratories & Scientific Services, Washington, D.C.

Issue:

Whether the PCB assembly is classifiable as a mounted piezoelectric crystal under subheading 8541.60.00, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *." Heading 8541, HTSUS, provides for mounted piezoelectric crystals.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings.

EN 85.41, pg. 1399, describes the mounted piezoelectric crystals covered under heading 8541, HTSUS, as follows:

They are used in microphones, loudspeakers, ultrasonic apparatus, stabilised frequency oscillating circuits, etc. They are classified here only if mounted. They are generally in the form of plates, bars, discs, rings, etc., and must, at least, be equipped with electrodes or electrical connections. They may be coated with graphite, varnish, etc., or arranged on supports * * *. *If, however, because of the addition of other components, the complete article (mounting plus crystal) can no longer be regarded as merely a mounted crystal but has become identifiable as a specific part of a machine or appliance, the assembly is classified as a part of the machine or appliance in question* * * * [italics added].

It is our opinion that the circuit board assembly is not simply a mounted piezoelectric crystal. According to the Customs laboratory, the subject merchandise has a mounted piezoelectric crystal which does not act as a transducer. Rather, it functions to control the frequency of the crystal oscillator. The addition of an integrated circuit, however, allows for the regulation of the time interval between pulses. This action causes the shaft and magnet to rotate 180 degrees every second, which, in turn, rotates the gears in the chart drive assembly.

The lab concluded that because of the configuration of the circuit board assembly and the addition of a solid state control device (integrated circuit), the assembly in question can no longer be regarded as merely a mounted crystal (with terminal or leads or packaged). Rather, the assembly has become identifiable as a specific part of a motor, and is classifiable as such. Parts of motors of under 18.65 W are classifiable under subheading 8503.00.40, HTSUS.

Holding:

The printed circuit board assembly is classifiable under subheading 8503.00.40, HTSUS, which provides for "[p]arts suitable for use solely or principally with the machines of heading 8501 or 8502 * * * [p]arts of motors of under 18.65 W (other than commutators)." The corresponding rate of duty for articles of this subheading is 10% *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA-2 CO:R:C:M 955381 LTO

Category: Classification

Tariff No. 9114.90.30

MR. TIM ACKERMAN

QUARTEX INC.

1012 Host Drive

Lake Geneva, Wisconsin 53147

Re: Printed circuit board assembly; revocation of HQ 953381; EN 91.14; Chapter 91, note 1(g), 4; heading 8503.

DEAR MR. ACKERMAN:

This is in reference to HQ 953381, issued to you on July 16, 1993, concerning the classification of a printed circuit board assembly under the Harmonized Tariff Schedule of the United States (HTSUS). Based upon further information now available, we have reconsidered HQ 953381.

Facts:

The article in question is a printed circuit board assembly (PCB), which will be assembled into a chart drive recorder. It is made of paper phenolic with copper paths and nickel/gold plated pads. Attached to the PCB is a wire bonded integrated circuit covered by epoxy and a 32.768 Kilohertz quartz crystal.

The PCB is the timing mechanism for a chart drive recorder. The integrated circuit allows for the regulation of the time interval between pulses. This action causes the shaft and magnet to rotate 180 degrees every second, which, in turn, rotates the gears in the chart drive recorder.

In HQ 953381, the PCB was classified as a part of a motor of under 18.65 Watts (W) under subheading 8503.00.40 (now, subheading 8503.00.75), HTSUS. It has been suggested that the PCB is classifiable as an assembly for a clock movement under subheading 9114.90.30, HTSUS.

Issues:

Whether the PCB is classifiable as an assembly for a clock movement under subheading 9114.90.30, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The headings at issue are as follows:

8503 Parts suitable for use solely or principally with the machines of heading 8501 or 8502

* * * * *

9114 Other clock or watch parts

Note 1(g) to chapter 91, HTSUS, states that this chapter does not cover "[a]rticles of chapter 85, not yet assembled together or with other components into watch or clock movements or into articles suitable for use solely or principally as parts of such movements (chapter 85)." Because the PCB in question has been assembled into an article that is suitable for use solely or principally as a part of a clock movement, this exclusion is inapplicable.

Note 4 to chapter 91 states that "movements and other parts suitable for use both in clocks or watches and in other articles (for example, precision instruments) are to be classified in this chapter." Further, the Harmonized Commodity Description and Coding System Explanatory Notes (EN) to heading 9114, HTSUS, pg. 1552, states that "parts suitable for use both in clocks or watches and in other articles, for example, in toys, meters

or measuring or precision instruments (springs, trains, jewels, hands, etc.) fall in this heading * * *." Therefore, although the assembly in question will be used in a chart drive recorder, it is classifiable under heading 9114, HTSUS, if the assembly is also suitable for use in clocks.

The PCB is the timing mechanism for the chart drive recorder. It contains an integrated circuit that allows for the regulation of the time interval between pulses. This action causes the shaft and magnet to rotate 180 degrees every second, which, in turn, rotates the gears in the chart drive recorder. Accordingly, it is our opinion that the PCB is classifiable as an assembly for a clock movement under subheading 9114.90.30, HTSUS.

Holding:

The printed circuit board assembly is classifiable under subheading 9114.90.30, HTSUS, which provides for "[o]ther clock or watch parts * * * [o]ther * * * [a]ssemblies and subassemblies for watch or clock movements consisting of two or more pieces or parts fastened or joined inseparably together * * * [f]or clock movements." The corresponding rate of duty for articles of this subheading is 6.4% *ad valorem* plus 0.3 cents for each piece or part, but if consisting in part of a plate or a set of plates the total duty shall not exceed the duty for the complete movement.

Effect on Other Rulings:

HQ 953381, dated July 16, 1993, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson
Herbert N. Maletz
Bernard Newman
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94-26)

GRUPO INDUSTRIAL CAMESA, ET AL., PLAINTIFFS, AND WIRE ROPE IMPORTERS' ASSOCIATION, PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND COMMITTEE OF DOMESTIC STEEL WIRE ROPE AND SPECIALTY CABLE MANUFACTURERS, DEFENDANT-INTERVENOR

Court No. 93-04-00236

[Defendant's motion to strike plaintiff-intervenor's brief granted.]

(Decided February 15, 1994)

Shearman & Sterling (Thomas B. Wilner, Jeffrey M. Winton and Joshua A. Newberg) for plaintiffs.

Klayman & Associates, P.C. (Larry Klayman) for plaintiff-intervenor.

Frank W. Hunger, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Cynthia B. Schultz*), *Lyn M. Schlitt*, General Counsel, *James A. Toupin*, Assistant General Counsel, United States International Trade Commission (*Lyle B. Vander Schaaf*), for defendant.

Harris & Ellsworth (Herbert E. Harris II, Cheryl Ellsworth, Jeffrey S. Levin and Jennifer A. Fedor) for defendant-intervenor.

OPINION AND ORDER

DiCARLO, *Chief Judge*: Defendant United States, joined by defendant-intervenor, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, moves to strike the brief of plaintiff-intervenor, the Wire Rope Importers' Association (WRIA). Defendant's motion is granted pursuant to USCIT R. 81(m).

BACKGROUND

This action contests the final affirmative determination by the International Trade Commission (ITC) in the antidumping investigation of *Steel Wire Rope from the Republic of Korea and Mexico*, 58 Fed. Reg. 16,206 (March 25, 1993). Plaintiff-intervenor initially brought a separate action challenging the ITC determination, contending that the determination, reached by a 3-3 tie vote, violated the Equal Protection Clause of the United States Constitution. The court dismissed that action for WRIA's failing to file a complaint within 30 days of the filing of the summons, as required by 19 U.S.C. § 1516a(a)(2) (1988). *Wire Rope Importers' Ass'n v. United States*, 17 CIT ___, Slip Op. 93-193 (Sept. 27, 1993).

In the alternative, WRIA sought intervention in this action. By Opinion and Order dated October 7, 1993, this court granted WRIA's motion to intervene as of right. The court held, however, that because WRIA filed its motion to intervene beyond the 30-day period for filing an action contesting an antidumping determination under 19 U.S.C. § 1516a(3)(2), its intervention must be confined to the claims set forth in plaintiffs' complaint. Opinion and Order dated October 7, 1993, Ct. No. 93-04-00236, at 4.

Pursuant to the court order, WRIA filed its brief as plaintiff-intervenor on November 8, 1993. The brief presents a single claim: the provision of 19 U.S.C. § 1677(11) (1988), under which a tie vote of the ITC constitutes an affirmative determination, violates the Equal Protection Clause of the Constitution.

Defendant moves to strike the brief under USCIT R. 12(f), claiming that the brief is immaterial and irrelevant to this action because the issue of constitutionality of 19 U.S.C. § 1677(11) was not raised in the original complaint, and that the brief was filed in disregard of the court Order of October 7, 1993.

DISCUSSION

As a threshold matter, the court will treat defendant's motion to strike pursuant to USCIT R. 12(f) as one pursuant to USCIT R. 81(m). Rule 12(f) permits this court to strike "any redundant, immaterial, impertinent, or scandalous matter" from a pleading. Because plaintiff-intervenor's brief is not a pleading,¹ defendant's motion to strike should be properly made under Rule 81(m), which allows the court to disregard briefs that are not "free from burdensome, irrelevant, immaterial and scandalous matter." USCIT R. 81(m). The court finds that no prejudice will result from treating the motion inaccurately denominated under Rule 12(f) as one under Rule 81(m).

As explained in the Opinion and Order of October 7, 1993, the court has consistently held that it lacks jurisdiction over an intervenor's challenge to an antidumping determination when that challenge is not covered by the original complaint and is made beyond the 30-day period prescribed by 19 U.S.C. § 1516a(a)(2) for instituting an action. See *Timken Co. v. United States*, 15 CIT 87, 89, 758 F. Supp. 1518, 1520 (1991); and cases cited therein. Following those decisions, the court held that WRIA's intervention should be limited to plaintiffs' claims for relief set forth in paragraph 16 of the complaint.

The court finds no claim challenging the constitutionality of 19 U.S.C. § 1677(11) in paragraph 16 of the complaint. Plaintiff-intervenor contends that the language of paragraph 16, which states that ITC's determination was not in accordance with law "in a number of respects, including the following * * *," is not exclusive and does not purport to include all of the ways in which ITC's determination is challenged.

¹ Pursuant to USCIT R. 24(c), WRIA was not required to file a pleading to accompany its motion to intervene in this action.

Plaintiff-intervenor's contention is without merit. There is no dispute over the constitutionality of a statute between the original parties. Plaintiff-intervenor's claim constitutes a separate challenge that goes beyond the claims set forth in paragraph 16 of the complaint.

Plaintiff-intervenor further contends that its argument that ITC's determination violated the Equal Protection Clause of the Constitution raises "a vitally relevant and important issue that must be addressed." Plaintiff-intervenor had its opportunity to raise the issue by filing its own action within the 30-day statutory period. Having allowed that period to lapse, plaintiff-intervenor cannot circumvent the statutory time limitation for contesting an antidumping determination by simply making a separate claim through intervention. *See Nakajima All Co. v. United States*, 2 CIT 170, 172 (1981).

Accordingly, it is hereby

ORDERED that defendant's motion to strike is granted; and it is further

ORDERED that plaintiff-intervenor's brief filed on November 8, 1993 is stricken in its entirety.

(Slip Op. 94-27)

FEDERAL-MOGUL CORP., PLAINTIFF AND PLAINTIFF-INTERVENOR, AND TORRINGTON CO., PLAINTIFF AND PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORE OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., KOYO SEIKO CO., LTD., KOYO CORP. OF U.S.A., PEER BEARING CO., NSK LTD., NSK CORP., CATERPILLAR INC., MINEBEA CO., LTD., AND NMB CORP., DEFENDANT-INTERVENORS

Consolidated Court No. 91-07-00530 and 91-08-00569

(Dated February 14, 1994)

JUDGMENT

TSOUICALAS, *Judge*: The Court having received and reviewed the Department of Commerce, International Trade Administration's Final Results of Redetermination Pursuant to Court Remand, *Federal-Mogul Corporation and The Torrington Company v. United States* Slip Op. 93-180 (September 14, 1993) ("Remand Results"), and any responses to the Remand Results submitted by the parties, it is hereby

ORDERED that the Remand Results filed by the Department of Commerce, International Trade Administration, are affirmed.

(Slip Op. 94-28)

FEDERAL-MOGUL CORP., PLAINTIFF AND PLAINTIFF-INTERVENOR, AND TORRINGTON CO., PLAINTIFF AND PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., KOYO SEIKO CO., LTD., KOYO CORP., OF U.S.A., PEER BEARING CO., NSK LTD., NSK CORP., CATERPILLAR INC., MINEBEA CO., LTD., AND NMB CORP., DEFENDANT-INTERVENORS

Consolidated Court No. 91-07-00530 and 91-08-00569

(Dated February 14, 1994)

JUDGMENT

TSOUCALAS, *Judge*: The Court having received and reviewed the Department of Commerce, International Trade Administration's Final Results of Redetermination Pursuant to Court Remand, *Federal-Mogul Corporation and The Torrington Company v. United States* Slip Op. 93-194 (October 7, 1993) ("Remand Results"), and any responses to the Remand Results submitted by the parties, it is hereby

ORDERED that the Remand Results filed by the Department of Commerce, International Trade Administration, are affirmed.

(Slip Op. 94-29)

NSK LTD. AND NSK CORP., PLAINTIFFS *v.*
UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 92-03-00158

(Dated February 15, 1994)

JUDGMENT

TSOUCALAS, *Judge*: The Court having received and reviewed the Department of Commerce, International Trade Administration's ("ITA") Results of Redetermination Pursuant to Court Remand *NSK Ltd. and NSK Corporation v. United States*, Slip Op. 93-178 (September 10, 1993) filed on November 9, 1993, and the ITA's Amended Results of Redetermination Pursuant to Court Remand *NSK Ltd. and NSK Corporation v. United States*, Slip Op. 93-216 (November 18, 1993) filed on December 8, 1993 (collectively "Remand Results"); it is hereby

ORDERED that the Remand Results filed by the ITA are affirmed; and it is further

ORDERED that this case is dismissed.

Index

Customs Bulletin and Decisions
Vol. 28, No. 10, March 9, 1994

U.S. Customs Service

Treasury Decisions

	T.D. No.	Page
Commercial gauger and laboratory, extension:		
Atlantic Petroleum Services, Inc., approval of site in Staten Island, NY	94-15	1
Camin Cargo Control, Inc., approval of site in Ingleside, TX	94-16	2
Inchcape Testing Services-Caleb Brett, Inc., approval of site in Deer Park, TX	94-17	3
North America Free Trade Agreement (NAFTA); interim regulations; solicitation of comments; parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181, and 191, CR amended; corrections to original document	94-1	4

General Notices

	Page
Customs "Mod Act"; public meeting to be held on March 8 and 9, 1994	9
Harmonized System Committee and Review Subcommittee of the CCC; dates and draft agendas for upcoming sessions	10
Tariff classification ruling letters, proposed revocation; solicitation of comments:	
Plastic top and bottom portion of unassembled picnic cooler	16
Printed circuit board assembly	21

U.S. Court of International Trade

Slip Opinions

	Slip Op. No.	Page
Federal-Mogul Corp. v. United States	94-27, 94-28	31, 32
Grupo Industrial Camesa v. United States	94-26	29
NSK Ltd. v. United States	94-29	32

